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INAUGURAL SPEAKER
ANNUAL HUGHIE JENNINGS MEMORIAL LECTURE SERIES
HONORING BASEBALL HALL OF FAME HUGHIE ("EEYAH") JENNINGS

***"MY FIFTY YEARS IN BASEBALL: WAYS IN WHICH
THE GAME HAS CHANGED AND STAYED THE SAME"***

Delivered by:

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Westminster Hall
University of Maryland
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Baltimore, Maryland

A year ago today, Judge Sonya Sotomayor granted the National Labor Relations Board's injunction order that it had voted to seek on March 26, 1995. In the hope that the owners and players could resolve their differences voluntarily without resort to law, I had delayed the Board's meeting on this matter -- but it quickly became apparent to me that consideration of legal intervention was required. With an order restraining unilateral changes on critical employment conditions in place, the players agreed to return to work. The owners accepted their offer, an abbreviated spring training commenced, free agents were signed out of a new training camp devised by the players association, and thus was born the '95 season.

Now, as spring hesitantly attempts to dispel the dolorous memories of the Blizzard of '96 and the senseless government shutdowns that were associated with it, baseball -- both sides of the bargaining table -- solicits forgiveness from America. Notwithstanding their inability to negotiate a collective bargaining agreement, the NLRB's injunction has pushed the parties back to negotiations with reports of proposals and offers and counterproposals floating through the air.

Young boys and girls -- and some not so young -- can once again practice their batting stances or hold the runner on base pitching out of the stretch while imagining tense moments, along with the celebrations and glory of the game in their living rooms, while waiting for buses or trains, mimicking Blue Moon Odom's countless throws to first base as he carefully scrutinized each advancing Cincinnati base runner from his eye's corner in the '72 World Series.

Baseball, the world's most elegant game is back, with spring's renewed hope about life itself -- and, in this Holy Week before Easter Day, back for its first full length season since Joe Carter's joyously animated base circling home run trot drew down the '93 season for the since plummeted Toronto Blue Jays.

Truly, Baltimore is an appropriate venue for this discussion -- and not simply because the advent of no-nonsense manager Davey Johnson with a passel of new superstars like Roberto Alomar make the Orioles the game's most promising team on paper since the Boston Red Sox of the late '40s and its 1950 version which hit .302 -- the last team ever to hit .300.

Peter Angelos, the O's executive helmsman, is the one who has brought Mercker, Surhoff, Meyers, McDowell and Wells here to augment last year's acquisition of the terrible tempered Bobby Bonilla. And, even more importantly, it was Mr. Angelos, along with the sagacious Sparky Anderson -- whose last game (hopefully not forever) was managed here in Camden Yards -- who refused to accede to the employment of strikebreakers, an idea so silly as to have imperiled baseball's future far beyond anything imagined today.

And it is Cal Ripken, with his grace and selflessness in a sport which indulges individualism, who began the road back with his gracious acceptance of last September's

accolades for breaking Lou Gehrig's record. Ripkens's next 62 games will match the world's consecutive games record held by Sachio Kinegusa of Japan's Hiroshima Carp, with whom I had a clubhouse visit in that country's '78 season.

But it is the University of Maryland Law School's own Hall of Famer, Hughie Jennings, the inspiration for this lecture series, who dramatizes the contemporary paradox. For, like love and life itself, it transcends the immediate, burrowing itself deeply within our inner fabric and psyche. And yet, the fact that baseball was even spelled differently in the time of Jennings -- it was the National Base Ball League and National Base Ball Players Association more than 100 years ago -- which tells us that the game inevitably changes, even when it appears returning to old themes. Jennings, a member of the previous century's original Baltimore Orioles and, like myself, a graduate of Cornell Law School, employed baseball's most notorious strikebreakers when he managed the Detroit Tigers and the team struck to protest Ty Cobb's suspension for attacking a spectator. The incident, which ended with Commissioner Ban Johnson's \$50 fine per game, antedated the National Labor Relations Act by 23 years, occurring the same year as baseball's shrine, Fenway Park, was constructed. Thus, the protected status of that 1912 walkout never came to my agency for adjudication.

My 50 years in baseball takes me back almost half way to Hughie Jennings to our house on 450 Bath Avenue, Long Branch, New Jersey. Our neighbors, the Hessleins, had 3 kids who were all older than me -- and the activities in their house, particularly the radio on their porch, held deep fascination for this kid about to turn 10. In that hot summer of 1946 the radio blared loudly from the Hessleins' porch with Mel Allen's soothing baritone references to a "Ballantine Blast" and a "White Owl Wallop," and his newsy descriptions of the activities of Joe DiMaggio and Phil Rizzuto. (Another of his favorite personalities, Yogi -- or Lawrence Peter as he was initially known -- Berra would only arrive the following September.)

In 1946 I looked up to Robbie Hesslein who, just a few years before, during World War II, had been so clever and generous in building a couple of wooden battleships for me that I could float in the bathtub, dreaming of the war that I constantly read about with Germany and Japan and how my ships would fare against air attacks from Messerschmitts and Zeros. But, somehow, I could not accept the Hessleins' lead in baseball. Perhaps it was because Mrs. Hesslein confided in me that she really wanted Billy Conn to defeat our beloved "Brown Bomber" Joe Louis in that summer of '46. But I think that it was rooted in events which transpired just a few miles away from our home off the Jersey shore.

Everyday that summer my mother packed a lunch for me in the morning and I, and my pals, bicycled to the Station Field near the railroad tracks and played baseball from morning to dusk. Every day, as we biked back and forth to the field, we talked about playing the game and what we had read in *The New York Times* (my parents forbade me to read the *Daily News*) and the dramatic descriptions provided to us at 6:45 p.m. through Stan Lomax's "day's doings in the world of sports."

In the late '40s I listened as Stan Lomax said:

Good evening everyone, this is Stan Lomax with the 'day's doings in the world of sports.' And today those Boston Red Sox continued to rare and tear

Lomax's next sentence or two would sometimes be drowned out by the ensuing eruption. In that sweet summer of 1946, the Red Sox had the wind to their back and, notwithstanding the delay in clinching the pennant until Ted Williams' uncharacteristic inside the park home run to left field of all places in Municipal Stadium (he always defied the "Williams Shift" devised by Lou Boudreau) were never seriously challenged until that fateful seven game series in October in which St. Louis Cardinal slugger Enos Slaughter raced daringly to the plate with the winning run.

Ted Williams socked two beautiful home runs in the American League's route of senior circuit in the All Star Game held in Fenway Park that year -- the second particularly dramatic because it came off the famous "blooper" pitch of the Pittsburgh Pirates' Rip Sewell. Fireballing Iowa-born Bobby Feller of the Cleveland Indians fanned a record 348 and the multi-talented Mel Allen sang, "Hey Baba Reba" as Boston's Mike Ryba entered a game from the Boston bullpen.

That summer of '46 was a fateful one in a number of respects. First, it inculcated in our group of sandlot ballplayers an unqualified love and passion for the game itself and, in my case, the Boston Red Sox, with whom I made a lifelong commitment, returning to my birthplace in Boston and ultimately scheduling business trips throughout the country so as to coincide with the arrival of the Carmine Hose. One of the "down" moments with the Red Sox -- and, of course, there have been a good many in the many near misses over the past 50 years -- was the elimination of the dignified road gray uniform with black-lettered BOSTON and no names on the back in 1990. "I feel like a California Angel," Red Sox perennial right fielder Dwight Evans told me that summer. The front office simply did not really understand how emblazoned that uniform was in the consciousness of this California Red Sox fan in exile.

Yet the distinctively home uniform white with red letters remains. It is still the timeless game which could go on forever, with the real grass, an idiosyncratic ballpark features which we all took for granted suddenly being appreciated anew here in Camden Yards and Cleveland's Jacobs Field. Baseball's exposure to the elements, the potential rain which I feared so much that May 1947 day when my father and I took the train to Yankee Stadium . . . and then the sun broke through the clouds, allowing me to see the Red Sox and the great Ted Williams, the greatest that the game has produced in my lifetime, for the first time ever. The rain delays, that plagued us today, makes one think back to "Oil Can" Boyd's ability to pitch after an hour of rain delay in Memorial Stadium in 1984. Along with the wind and the location of the sun, they add to elements so uncertain as to be comparable to the contours of life itself.

The immediate post-World War II period of my childhood was important in more fundamental respects and developments, and baseball mirrored them as well. My late father -- who had no real interest in the game at that time, announced at the dinner table that Jackie Robinson had knocked one in in the first game of the Yankee-Dodger Subway Series in '47, even before I could read it in *The Times* myself. Robinson's lonely and brave fight to succeed in the face of racial insults from his fellow players, along with the Supreme Court's landmark decisions and the 1960's enactment of employment and voting discrimination legislation, paved the way for people like myself in the legal profession and able managers like my friends Dusty Baker of the San Francisco Giants, and Don Baylor, who was an indispensable element in the '86 Red Sox AL Championship, now mounting the top steps of the Colorado Rockies' dugout. The adoption of Number 42 by MVP Bosox slugger, Mo Vaughn is yet another appropriate tribute to Robinson's unique achievement in baseball and American history.

But I only saw Robinson play once in my life in person. I never saw the Great Ted Williams hit one out of the park. My contact with the game was rooted in playing sandlot ball on that much frequented Station Field, and the imagery I fashioned from both radio and newspapers. (There was no television then and in the late '40s; it seemed as though only the rich had access to it.)

"Do the Red Sox know how much you appreciate them?" said my Aunt Isabel during one of my visits to her Dedham home when I was a visiting professor at Harvard Law School in '71-'72. Only in May 1986 did I first set foot in a big league dugout when credentialed as a journalist freelancer for the *San Francisco Examiner*. My broadcasts of Stanford baseball games, as well as my work as a salary arbitrator for baseball and my involvement in the game as Chairman of the National Labor Relations Board was to come much later, but the roots of it all were in those long idyllic summer days of the '40s.

For as we continued our baseball activities in yet another hot summer of 1949, suddenly names with which none of us had been very familiar began to emerge -- Mickey Owen, we read, had dropped that famous third strike in the '41 World Series . . . somehow I had been able to recall Pearl Harbor, but not that classic moment. The Cardinal left hander, Max Lanier, whose son was later to climb the dugout steps in President Bush's adopted city of Houston . . . Sal "The Barber" Maglie, who was to figure so prominently in both Brooklyn and New York Giant lore -- and the relatively obscure, Danny Gardella, the utility player who struggled to traverse the Mendoza line of a .200 batting average.

All of these people had departed organized baseball for the Mexican League in 1946 -- and suddenly here they were returning as we played on in '49 in that incredibly tense Red Sox-Yankee pennant race in which the fortunes of each team shifted so dramatically as the months unfolded, the circus like catch which Al Zarilla made leaping into the Yankee Stadium right field stands a week before the pennant race ended, the much disputed winning run produced by Johnny Pesky's slide under Ralph Houk's tag -- all culminating

in the high-noon confrontation on the final day of the season as Tommy Henrich gloved the high twisting foul ball by Birdie Tebbetts in front of the Yankee first base dugout for the last out.

The players who had left for Mexico that year had violated the terms of the reserve clause and were banned from playing in organized baseball in the Major Leagues. Gardella, of the New York Giants, brought suit under the Sherman Antitrust Act. The federal district court dismissed Gardella's complaint on the ground that it had no jurisdiction. This conclusion was arrived at because of the United States Supreme Court's holding in Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs.¹

In that case, it is to be recalled that Justice Holmes, like some of the great baseball players of our time, had a bad day, and held that major league baseball clubs were not engaged in interstate commerce or trade, at least within the meaning of antitrust legislation, the issue presented there. Notwithstanding the principle of stare decisis, the U.S. Court of Appeals for the Second Circuit in Gardella v. Chandler² had sent the case back to trial. Judge Hand, concluding that it was possible for plaintiff to prove that interstate activities were present in baseball, stated that although: "... insufficient before, in conjunction with broadcasting and television -- [might] together form a large enough part of the business to impress upon it an interstate character." Judge Frank, who adopted an even more questioning posture toward Federal Baseball, noted the "comprehensive sweep" of both the Sherman Antitrust Act and its reliance upon cases construing the National Labor Relations Act and stated that we must, given modern developments: "... consider this case as if the only audiences for whom the games are played consists of those persons who, in other states, see, hear, or hear about the games via television and radio."

For the most part, my world was radio -- not television. Mel Allen, the Dodgers' Red Barber with his relaxed musings about the "catbird seat" and then Jim Britt of the Red Sox on the short wave radio that my father had fixed up for me so that I could listen to the developments involving my club first hand. The Gardella case was remanded for trial in light of the court's distinction of and ultimately challenge to the principles of Federal Baseball -- a distinction based upon radio heard by a 10 year old, a medium once feared by the owners because they thought it would empty their parks.

Gardella sent a tremor through organized baseball and, thus, it settled with Gardella, Owen, Maglie, Lanier, et al. But the Second Circuit's challenge to Federal Baseball Club died aborning in Toolson v. New York Yankees, Inc.,³ and Flood v. Kuhn⁴

¹ 259 U.S. 200 (1922).

² 172 F.2d 402 (2d Cir. 1949).

³ 346 U.S. 356 (1953).

⁴ 407 U.S. 258 (1971).

in which the St. Louis Cardinals eminent center fielder who, bad arm and all, threw underhanded from the outfield in the 1967 and 1968 World Series, unsuccessfully sought to have the Court reconsider Federal Baseball.

Meanwhile, however, another drama was unfolding. My predecessors at the National Labor Relations Board, taking into account the National Labor Relations Act cases to which Judge Frank referred, took jurisdiction over the industry in 1969⁵ and set the stage for our involvement in the biggest dispute of them all, the '94 -'95 strike of the Major League Baseball Players Association.

In the last weekend of the '95 season, as the Red Sox prepared for their fateful playoff confrontation with the demonstrably superior Cleveland Indians in which old friend Tony Pena put an end to "impossible dream"-type hopes with a home run at 2:15 a.m. Eastern Standard Time, and rumors swirled around the head of Sparky Anderson about his future employment as his team played out the string with the Baltimore Orioles here in this town, the Court of Appeals for the Second Circuit affirmed the position taken by the Board and Judge Sotomayor in resounding fashion. The court concluded that free agency, salary arbitration and other provisions relating to the reserve clause were mandatory subjects of bargaining within the meaning of the Act. The court reiterated its view that collective bargaining between professional athletics and leagues raises "numerous problems with little or no precedent in standard industrial relations."⁶ The court concluded that the injunction which our agency had sought was "just and proper." Said the court:

Given the short careers of professional athletics and the deterioration of physical abilities through aging, the irreparable harm requirement has been met.⁷

The Board's decision and its affirmance by the district court and in the Second Circuit Court of Appeals was vindication for the public interest and the effective interpretation and administration of the National Labor Relations Act. It was indeed a long deep drive for collective bargaining!⁸ It brought about the resumption of the 1995 baseball season and it heralds the chance for baseball to reclaim its status as the nation's game.

Though a new round of hearings is scheduled to begin with an Administrative Law Judge of our agency on April 29, the fact that the hearing has been postponed on a number of occasions in the past at the request of both sides in order to accommodate the continuing

⁵ The American League of Professional Baseball Clubs, 180 NLRB 190, 191 (1969).

⁶ Wood v. National Basketball Association, 809 F.2d 954, 961 (2d Cir. 1987).

⁷ Silverman v. Major League Baseball Player Relations Committee, 150 LRRM 2390, 2396 (2d Cir. 1995).

⁸ See Berry & Gould, *A Long Deep Drive to Collective Bargaining: Of Players, Owners, Brawls, and Strikes*, 31 CASE W. RES. L. REV. 685, 774 (1981).

efforts to reach a collective bargaining agreement and to thus settle the unfair labor practice charges which are still outstanding before us. Questions of a payroll tax and revenue sharing are being discussed with the parties and it is generally anticipated that strikes and lockouts are not part of the plans for the '96 season.

And so it appears that there will be a chance to focus upon the game. "Strike called at the knees" is something that I heard frequently in those broadcasts of the '40s and '50s. The new rule changes have brought us full circle. Similarly, the sight of a Brady Anderson triple with the ball ricocheting high off the ledge in Camden Yard's right field brings back special memories of the ball doing the unexpected in Fenway's "Pesky's Corner" and long fly balls which are recorded as putouts in Yankee Stadium's "Death Valley" in left center.

But there is a good deal of change this 1996 Opening Day. Paradoxically, the emergence of the new parks, seems to have spelled almost immediate demise of not only Candlestick Park with its winds that come kicking up at 3:00 p.m. everyday, but also the shrines like Fenway Park and Tiger Stadium. It can be built and they will come -- so said the voters of San Francisco last month!

Notwithstanding the effectiveness of the National Labor Relations Act in producing peace in baseball, the lengthy '94-'95 strike as well as recurrent strikes and lockouts before it, indicate that the Act may not be relevant to some of the problems which plague America's game. President Clinton proposed compulsory arbitration legislation in early '95 only to have it rejected by the Republican leadership in Congress.

As the Second Circuit has said, the problems with professional sports are different. This is way the Supreme Court's consideration of Brown v. Pro Football,⁹ now before the Supreme Court, a dispute between the NFL Players Association and the National Football League over the unilateral imposition of a uniformed salary for so-called developmental players, dramatizes anew the anomalies between the legal treatment of baseball and other sports. This case involves the applicability of antitrust to professional football -- an earlier decision did the same for basketball¹⁰ -- and the accommodation that must be struck between antitrust and labor law -- an accommodation not present in baseball given the continued viability of Federal Baseball Club.

In Brown the Court of Appeals for the District of Columbia stated that antitrust could only be used where the union and the collective bargaining process were not in existence. On at least three occasions in the past, in both football and basketball, the players associations have used the basic implications of this line of authority to disappear through decertification or something akin to it -- and then revive mirable dictu in order to negotiate an agreement which the owners needed desperately to avail themselves of the implied labor exemption immunity to antitrust law which a collective agreement clearly

⁹ Brown v. Pro Football, Inc., ____ F.3d ____, 148 LRRM (BNA 2769 (D.C. Cir. March 21, 1995), cert. granted ____ U.S. ____ (1995).

¹⁰ National Basketball Association v. Williams, 45 F.3d 684 (2d Cir. 1995).

gives them. The difficulty with the position taken by the lower court in Brown, however, is that it invites game playing on both sides about the actual existence of the union, promotes an incentive to a false hari-kari or union suicide and promotes disaffiliation with unions and the collective bargaining process antithesis of the policy purposes of the National Labor Relations Act for which I have responsibility.

Professional sports are different and they will see change. Perhaps the Supreme Court's promotion of antitrust at some point subsequent to impasse and the collective bargaining process -- but considerably short of the elimination of the process altogether -- will invite reexamination of baseball and antitrust. Players will move from team to team with the advent of antitrust -- but Cal Ripken is testimony to the fact that players can remain with one team even in today's enhanced free market.

And, of course, the Washington Senators, the Philadelphia Athletics and the St. Louis Browns always dealt players to other teams -- through trades or sales and not free agency. In response to escalating costs associated with players' salaries, as well as antitrust litigation by cities who have been left out of Major League baseball, expansion and even relocation in the future may be inevitable. This will lead to a new focus upon expansion south of the border as well as north of it -- a phenomenon which we will hear more about when the San Diego Padres, pushed out of town by the Republican Party this summer, will play games in Mexico. Ultimately, in one form or another there will be formal playoff or a genuine World Series between America and Japan. The advent of Hideo Nomo of the Los Angeles Dodgers as well as the tensions confronting Fidel Castro, have made Americans aware that there is a great deal of good talent in the Far East, Latin America and Australia. All of it will not come to America.

Meanwhile, inter-league play advocated by many like Williams, even when I was a small boy in Long Branch will be good for the game. But baseball should not tinker with the game itself -- for there is nothing wrong with it. What baseball needs to do is to advertise its ambiance, to invite, for instance, fans into the stadium when batting practice commences. Then, once again, fans will know the identity of those more mobile players without any concession to limited attention spans and the consequent need to place names on the backs of the uniform in gauche fashion. Somehow baseball must reach the television and Internet generations that may have less time for reflection.

Unless baseball does the unthinkable and introduces aluminum bats at the professional level, nothing will change the sweet sound of the crack of the bat. Nothing can change the beauty of a double-play, the ability of Luis Alicea to somehow release the ball on time to almost shove it at first base for a game ending twin killing with the Baltimore runner barreling down upon him last August. Nothing can change the dumbfounded amazement of father and son looking at one another in wonderment as Dave Henderson's dramatic ninth inning '86 home run disappears over the left field wall beyond the reach of a downcast Brian Downing when all odds seemed to favor doom that brilliant sunshine filled Anaheim Sunday afternoon.

Of course, nothing will ever be like it was. Even the Fenway famed “Green Monster” is different from the one off which the Splendid Splinter played carom shots. Yaz, Rice, and now Greenwell have had an easier time of it since 1976 when the new one — like so much else which is new it looks like the old one — was built.

But, notwithstanding the foibles of those who play it and own it, the game lives on in 1996 — for me like the Democratic Party, the Episcopal Church, NAACP, and the Modern Jazz Quartet, it is truly one of life’s eternal verities.

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